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JANET NAPOLITANO, as Secretary of the
9 Department of Homeland Security

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION
13

14 FRANK JOSEPH CARDERELLA,
15 Plaintiff,

16 v.

17 JANET NAPOLITANO, as
18 Secretary of the Department of
Homeland Security,

19 Defendant.
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No. CV09-8299 R (MANx)

DEFENDANT'S AMENDED NOTICE
OF MOTION AND MOTION FOR
SUMMARY JUDGMENT, OR, IN THE
ALTERNATIVE, SUMMARY
ADJUDICATION

Date: September 20, 2010

Time: 10:00 a.m.

Ctrm: Spring Street Courthouse
312 N. Spring Street, Ctrm 8
Los Angeles, California 90012

Final Pre-trial Conf.: September 20, 2010

Trial: October 19, 2010

[Filed concurrently with Declarations of
Beverly K. Wilson, Linda M. Smithson,
Robert L. Turner and AUSA Sekret T.
Sneed]

[Fed. R. Civ. Proc. 56]

Honorable Manuel L. Real

1 TO THE PLAINTIFF AND TO HIS COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on September 20, 2010, at 10:00 a.m., or as
 3 soon thereafter as the matter may be heard, in Courtroom 8 of the above
 4 entitled-court located at the Spring Street Courthouse, 312 North Spring Street¹,
 5 Los Angeles, California 90012, the Honorable Manuel L. Real presiding,
 6 defendant Janet Napolitano, in her official capacity as Secretary of the Department
 7 of Homeland Security (“Defendant”), will, and hereby does, move this Court for
 8 summary judgment against plaintiff Frank Joseph Carderella (“Plaintiff”).

9 This Motion is brought pursuant to Rule 56(a) of the Federal Rules of Civil
 10 Procedure on the grounds that Defendant is entitled to summary judgment against
 11 Plaintiff because Plaintiff cannot set forth evidence sufficient to establish that
 12 similarly situated applicants outside of Plaintiff’s protected class were treated
 13 more favorably than him so as to establish a *prima facie* case of discrimination in
 14 violation of Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C.
 15 2000e-16 *et seq.* (“Title VII”).

16 Alternatively, if for any reason summary judgment cannot be rendered on
 17 the whole action, Defendant will, and hereby does, move this Court pursuant to
 18 Rule 56(d) of the Federal Rules of Civil Procedure for an order adjudicating that
 19 there is no genuine issue as to any of the following material facts and that the final
 20 judgment in this action shall, in addition to any matters determined at trial, award
 21 judgment as established by such adjudication:

22 (1) Defendant did not discriminate against Plaintiff on the basis of his
 23 race in violation of Title VII;

24 (2) Defendant did not discriminate against Plaintiff on the basis of his
 25 national origin in violation of Title VII;

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 27
 28 ¹Defendant files this Amended Notice to correct the street address in the original
 Notice of Motion for Summary Judgment filed on August 18, 2010 [DE#10].

1 (3) Defendant did not discriminate against Plaintiff on the basis of his
2 religion in violation of Title VII; and,

3 (4) Defendant did not discriminate against Plaintiff on the basis of his
4 sex in violation of Title VII.

5 This Motion is based on this Notice of Motion and Motion, the attached
6 Memorandum of Points and Authorities, the concurrently filed Proposed Separate
7 Statement of Uncontroverted Facts and Conclusions of Law, the concurrently filed
8 Declarations of Beverly Wilson, Linda M. Smithson, Robert L. Turner and AUSA
9 Sekret T. Sneed, the pleadings, records and files in this action, and such other
10 evidence and argument as may be presented at the time of hearing.

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12 Dated: August 19, 2010

Respectfully submitted,

13 ANDRÉ BIROTTE JR.
14 United States Attorney
15 LEON W. WEIDMAN
16 Assistant United States Attorney
17 Chief, Civil Division

18 /s/
19 SEKRET T. SNEED
20 Assistant United States Attorney

21 Attorneys for Defendant
22 JANET NAPOLITANO, as Secretary of the
23 Department of Homeland Security
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